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NATIONAL INTELLIGENCE ESTIMATE

*Law of the Sea: The Likelihood and Implications of
Further Expansion of National Oceanic Claims
if a Treaty Proves Nonnegotiable*

State Dept. review completed

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LAW OF THE SEA:
THE LIKELIHOOD AND IMPLICATIONS OF NATIONAL
OCEANIC CLAIMS IF A TREATY PROVES NONNEGOTIABLE

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**THIS ESTIMATE IS ISSUED BY THE DIRECTOR OF CENTRAL INTELLIGENCE.
THE NATIONAL FOREIGN INTELLIGENCE BOARD CONCURS, EXCEPT AS
NOTED IN THE TEXT, AS FOLLOWS:**

The following intelligence organizations participated in the preparation of the Estimate:

The Central Intelligence Agency, the intelligence organizations of the Departments of State and Defense, and the National Security Agency.

Concurring:

The Acting Deputy to the Director of Central Intelligence for the Intelligence Community,
Acting Vice Chairman

The Acting CIA Member representing the Central Intelligence Agency

The Director of Intelligence and Research representing the Department of State

The Director, Defense Intelligence Agency

The Director, National Security Agency

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Abstaining:

None

Also Participating:

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The Director of Naval Intelligence, Department of the Navy

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KEY JUDGMENTS

- With or without an international Law of the Sea (LOS) Treaty that is acceptable to the US, there is no turning back most of the national claims to ocean space and resources that have already been made. An acceptable treaty, however, would remove any international legal basis for the claims of some 25 to 30 of the world's 129 coastal states to territorial seas with breadths greater than 12 miles, and would inhibit further large-scale unilateral claims—at least for a time.¹
- The “creeping expansion” of national claims in recent years has resulted from the same complex mixture of national pride and political, economic, and national defense factors that has motivated territorial expansion throughout history.
- In the case of many of the developing countries, an important motivation is the underlying political desire to garner for themselves the greatest possible share of the ocean's wealth and to prevent the advanced nations from capturing the lion's share.
- Assuming that the present draft text of the LOS treaty were changed so that it was acceptable to the US and that a comprehensive treaty finally came to fruition, some further expansion of unilateral claims would still take place.² Part of this expansion, however, would have no serious adverse implications for the US. The question which this Estimate addresses is to what extent there would be more claims of types that did adversely affect US interests in the absence of a comprehensive treaty than would be the case with such a treaty. Specifically, four situations, and the consequences thereof, are examined: (a) agreement on a comprehensive treaty acceptable to the US, (b) a collapse of negotiations and a failure to obtain any treaty, (c) the conclusion of a partial treaty (i.e., one without an agreement on the deep seabed) acceptable to the US rather than a comprehensive treaty, and (d) the conclusion of a treaty that the US rejected but most other nations accepted.

¹ All references to “miles” in this Estimate are to nautical miles.

² Throughout this Estimate, all references to the “present draft text” of the LOS treaty refer to the Revised Single Negotiating Text (RSNT), which was issued in May 1976 at the end of the 1976 spring session of the Law of the Sea negotiations in New York. After the basic work on this Estimate had been completed, a new draft text of the treaty—called the Informal Composite Negotiating Text (ICNT)—was issued on 20 July 1977. The existence of this new draft does not affect the conclusions or judgments in this Estimate, since we are comparing the consequences of a “no-treaty” situation not with either of the named draft negotiating texts, but with a treaty that would be acceptable to the US. The type of treaty that the Intelligence Community postulates as being acceptable to the US is discussed in paragraph 57.

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Consequences of a treaty:

- A comprehensive treaty acceptable to the US would not prevent either new geographic or new functional claims. On the other hand, such a treaty would inhibit a large-scale expansion of claims.³ Specific provisions of the treaty would delimit the rights and duties of states in economic zones and provide for transit through and over international straits and archipelagos.
- The establishment under a treaty of an international regime for the deep seabed in which developing countries have an interest would reinforce the legal restraints of the treaty. The international seabed area would be designated as the "common heritage" of mankind and claims in this area beyond those permitted by the treaty's terms would violate the principle of common heritage.
- To the extent that the treaty contained effective dispute settlement procedures, states would be provided a useful means of resolving disputes arising from differing interpretations of the treaty.

Consequences of a collapse of negotiations and no treaty:

- In the absence of a treaty accepted by the US and a majority of other nations, there would be a number of pressures on states to expand their claims.
- The degree to which the leading maritime powers—particularly the US—openly or tacitly acquiesce in the claims of other nations is a key to assessing the consequences of a "no treaty" situation.
- The very failure of the negotiations—and the probable subsequent action of the US to begin mining on the deep seabed—would lead some of the developing countries to expand their ocean claims.
- US national legislation on deep seabed mining, passed either during the negotiations or in response to their collapse, would probably be followed by similar legislation in West Germany, the UK, Belgium, Japan, and perhaps France. The developing states would regard such laws as unjust unilateral claims to the ocean's resources. A number of Latin American and African states would probably retaliate by advancing their own claims to seabed resources beyond their 200-mile zones.

³ The Director of Intelligence and Research, Department of State, believes that the potential for stability which a treaty would create is underestimated and the stabilizing effects of a rejected negotiating text are exaggerated. A comprehensive treaty acceptable to the US would clearly inhibit new geographical or functional claims. While such a treaty would not totally prevent new claims, it would form the firm basis for principles of customary international law to which a majority of states agreed. Most states would comply with the treaty's terms protecting navigation and overflight, except in the few instances where to do so would cause them major injury. The Director of Intelligence and Research further believes that, since the treaty will to a great extent meet the resource requirements of coastal states, it will for the foreseeable future eliminate this major cause for ocean claims. Finally, with a treaty, the US would have legal bases for not recognizing national claims which exceed those rights established by the treaty.

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- On the other hand, there are some pressures that would inhibit an expansion of claims. The maritime states are anxious to preserve traditional high seas rights to the maximum extent, and would consider those interests carefully before making additional claims and setting precedents for others to follow. Furthermore, even without a treaty, the 12-mile territorial sea and 200-mile economic zone would remain widely accepted for the near future, and this wide acceptance would tend to moderate pressures for broader geographic limits.
- On balance, the Intelligence Community believes that while there would be no rush into extensive new maritime claims, there would be a significantly greater expansion of claims adverse to US interests in the absence of a comprehensive treaty accepted by the US than would be the case if there were such a treaty.
- With respect to matters other than the oceans, a collapse of negotiations would encourage a hardening of the overall North-South relationship, because to some extent the developing nations regard the issue as a touchstone of North-South relations. LOS matters, however, constitute only a piece—and a fairly small piece—of the North-South relationship. Things that happen in many other areas will be equally important in determining the tenor of that relationship.

Consequences of a partial treaty:

- A majority of the nations involved in the LOS negotiations are developing ones. Early on, these nations perceived that the main interest of the maritime powers was in the maintenance of traditional rights of navigation, while their own main interest was in establishing jurisdiction over all living and mineral resources in coastal areas and in guaranteeing themselves a major share of deep seabed resources. They have insisted that the issues be combined in one treaty and will continue so to insist.
- For this reason, we believe on balance it is unlikely that a partial treaty acceptable to a majority of the world's nations can be negotiated.
- If a multilateral treaty were negotiated by a minority of nations—for example, a treaty limited to rights of navigation and signed principally by the developed states—the decisions of all nonsigners on whether to extend their ocean claims in the future would be very similar to what they would do in a “no treaty” situation.

A treaty which most nations accepted but the US rejected:

- Since most of the developing nations would presumably accept such a treaty, the treaty would, for a time, limit creeping

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jurisdiction by the developing nations to the terms of the treaty itself.

- If most of the other developed states rejected the treaty along with the US, the prevailing political climate would be polemical and North-South differences would be intensified. As in the "no treaty" situation, however, the basic character of the North-South relationship would be determined by a broad spectrum of other matters as well.
- The principal implications for the US of failure to achieve a comprehensive and acceptable treaty would be as follows:
- In the defense area, failure to achieve such a treaty would make it substantially more difficult for the US to uphold the right to freedom of movement for its military forces in coastal areas of the world, including unrestricted passage through and over straits and archipelagos, and to obtain certain types of foreign intelligence. Given current US military capabilities and force levels, this reduced freedom of movement would not be critical for the foreseeable future, but it would make operations of US general purpose forces more costly, both politically and economically. As a result, the ability of the US to pre-position its military forces in a timely manner could be seriously affected.⁴
 - In the area of commercial navigation and overflights, the US and other developed states probably would be faced with some new controls and possible harassment in certain straits, archipelagos, and economic zones in the absence of an acceptable treaty, but it is unlikely that severe restrictions would be imposed in view of the dependence of almost all nations on seaborne commerce.
 - Efforts by the US to begin deep seabed mining would be criticized strongly by the developing states in the absence of a treaty. The developing states probably would do little directly to prevent US activities on the deep seabed if there were no treaty, but some might be tempted to take harassing or retaliatory actions against the US in other areas of ocean jurisdiction if such actions were consonant with their overall national interests.
 - US interests with respect to environmental protection probably would not be met as effectively without a treaty as with one, although the primary value of a treaty would be in providing codification of a general obligation to protect the ocean

⁴ The Director of Intelligence and Research, Department of State, believes reduced freedom of movement would be critical in some instances. While in a serious crisis this reduction in mobility could be overcome if the US were willing to pay the price, failure to obtain treaty protections on straits, archipelagos, and economic zones would narrow the range of diplomatic options available to support US foreign policy objectives.

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environment rather than specific requirements for future regulatory actions.

- In other areas, the presence or absence of a treaty would make little practical difference to the US.
 - Further movement toward exclusive coastal state control of 200-mile fishing or economic zones is inevitable with or without a treaty. The vast bulk of the US fishing industry has always concentrated on fishing grounds near the US coast, and the prospects for that portion of the industry look excellent under a regime of fishing zones. The US tuna industry, however, which is a distant-water operation, would be adversely affected.
 - With respect to offshore oil, the presence or absence of a LOS treaty will not seriously affect US interests. The problems that arise will be the same in both cases.
 - The US objective of promoting unhindered scientific research in all ocean areas beyond a 12-mile territorial sea is almost certainly a lost cause with or without a treaty.
- The attitudes of key groups of foreign nations on Law of the Sea issues are summarized in paragraphs 43-52 of this Estimate.

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